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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/629,099	07/29/2003	Richard John Schmidt	18174A	6365

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KIMBERLY-CLARK WORLDWIDE, INC.  
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NEENAH, WI 54956

EXAMINER
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TORRES VELAZQUEZ, NORCA LIZ

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 12/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/629,099

Applicant(s)

SCHMIDT ET AL.

Examiner

Norca L. Torres-Velazquez

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 7/29/03 through 8/13/04.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-37 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-37 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 30804 81304
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

2. Claim 13 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claim is indefinite because it recites that “the thermoplastic (meltblown) fibers...” are applicants trying to claim meltblown fibers? If so, it must be positively recited in the claims. If not, then the term must be removed from the claim as it is recited in an improper format (i.e. in parenthesis) and there is insufficient antecedent basis for the “meltblown” limitation in the claim.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

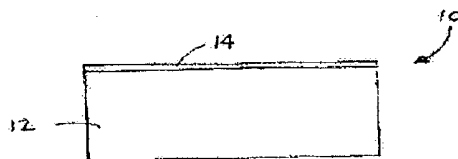
The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002

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do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

4. Claims 1-9, 12, 19, 26-31 and 35 are rejected under 35 U.S.C. 102(e) as being anticipated by TILTON (US 2004/0023586A1).

TILTON discloses a fibrous blanket material 10 having a first fibrous layer and a layer of meltblown polypropylene. (Abstract) In Figure 1 of the reference (shown below), shows the polypropylene meltblown layer 14 and the first fibrous blanket layer 12. The first fibrous layer 12 typically is provided with a thickness of between about 0.5 to about 8.0 cm. The first fibrous layer has an average fiber diameter of between about 10.0 and about 30.0 microns and a density of between about 0.5 and about 8.0 lbs/ft<sup>3</sup> [8-128 kg/m<sup>3</sup>]. The layer 14 of meltblown polypropylene fibers has a thickness of between about 0.0127 to about 0.254 cm, a weight of between about 0.5 to about 10.0-ounces/sq. yard [0.01695-0.3391 kg/m<sup>2</sup>]. The meltblown polypropylene fibers of the layer 14 have an average diameter of between about 2.5 to about 50.0 microns. (Refer to paragraphs [0023-0024])



*Fig. 1*

The Examiner equates layer 14 of TILTON to the presently claimed first layer. The Examiner has calculated the density of this layer based upon the basis weight and the thickness of the layer taught by TILTON. A density of 133 kg/m<sup>3</sup> is obtained when the layer has a basis

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weight of 0.5 oz/yd<sup>2</sup> [0.01695kg/m<sup>2</sup>] at a thickness of 0.0127 cm. Therefore, a density of 133 kg/m<sup>3</sup> meets the limitation of at least 50 kg/m<sup>3</sup> claimed herein. It is further noted, that with the range of values for the thickness and basis weight taught by TILTON, densities as low as 6.67 kg/m<sup>3</sup> can be obtained. The range of fiber diameter taught by TILTON meets the claimed fiber diameter. Layer 12 of TILTON is equated to the claimed second layer comprising a high loft material. It is noted that the term "high loft material" has been described to be a material with a z-direction thickness generally in excess of about 3 mm. (Specification page 6, lines 15-22) The thickness of the fibrous blanket layer 12 of TILTON has a thickness of about 5 mm to about 80 mm.

With regards to claim 2, it is noted that layer 14 of TILTON has a thickness of 0.0127-0.254 cm [0.127 – 2.54 cm]. (Refer to [0024])

With regards to claims 3 and 4, TILTON teaches average fiber diameter from 2.5 to 50 microns. (Refer to [0024])

With regards to claims 5 and 6, the thickness taught by TILTON meet the presently claimed thickness. With regards to the density of the nonwoven web, it is the Examiner's position that the combinations of thickness and basis weight taught by the reference meet the claimed densities. For example, at a thickness of 0.3 mm and a basis weight of 0.018 kg/m<sup>2</sup>, the density of the layer is 60 kg/m<sup>3</sup>.

With regards to claims 7, 8, 9 and 12, it is noted that the reference teaches using meltblown polypropylene fibers. [0024]

With regards to claim 19, it is noted that the reference teaches using fiber material such as polyester and fiberglass. (Refer to [0026])

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With regards to claims 26-29, the reference teaches a thickness of between about 0.5 and about 8.0 cm [5-80 mm] for layer 12. (Refer to [0023])

With regards to claims 30-31, the reference teaches that layer 12 is formed by any suitable manner known in the art and that it may incorporate multicomponent fibers. (Refer to [0028])

With regards to claim 35, the reference teaches an additional layer 16.

***Claim Rejections - 35 USC § 102/103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 10 and 11 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over TILTON (US 2004/0023586A1).

Although TILTON does not explicitly teach the claimed pressure drop, it is reasonable to presume that this property is inherent to the fibrous blanket material of TILTON. Support for said presumption is found in the use of like materials (i.e. a material comprising a first layer with similar density and thermoplastic fiber diameters similar to those claimed herein, further a second layer with similar structure to the second layer claimed herein.). The burden is upon Applicant to prove otherwise. *In re Fitzgerald* 205 USPQ 594. In addition, the presently claimed property of a pressure drop of at least 1 mm of water or between about 3 mm and about 10 mm of water at a flow rate of about 32 liters/min would obviously have been present one the

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TILTON product is provided. Note In re Best, 195 USPQ at 433, footnote 4 (CCPA 1977) as to the providing of this rejection made above under 35 USC 102.

7. Claim 37 is rejected under 35 U.S.C. 102(e) as being anticipated by TILTON as applied above and further evidenced by THOMPSON et al. (US 5,841,081).

It is the Examiner's position that using the acoustical insulation material taught by TILTON in the manner claimed in claim 37 is well known in the art as it is further evidenced by the THOMPSON reference herein. THOMPSON is also directed to an acoustical insulation material and the reference discloses positioning the material between a source area and a receiving area such that a major face of the insulation intercepts and attenuates sound waves passing from the source area to the receiving area. (Abstract)

***Claim Rejections - 35 USC § 103***

8. Claims 13-16, 18 and 32-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over TILTON as applied above, and further in view of THOMPSON (US 5,841,081).

TILTON is silent to the use of multicomponent fibers in the layer 14 (first layer of the present invention).

THOMPSON is also directed to a sound and acoustical insulation. The reference teaches the use of meltblown bicomponent microfibers that include polyolefins such as polypropylene and polyethylene in blends. (Col. 6, lines 39-56) The reference further teaches fibers with side-by-side configuration. (Col. 7, lines 1-2)

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the layer 14 of TILTON and provide with multicomponent fibers with the motivation of providing the web layer with materials that have an adhesive

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component and a supporting component arranged in a coextensive side-by-side configuration along the length of the fiber that will provide the layer with sufficient integrity that it can withstand handling and further processing during lamination.

9. Claims 17 and 20-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over TILTON and THOMPSON as applied above, and further in view of PIKE et al. (US 5,759,926).

The prior art above is silent to the splittable multicomponent fibers claimed herein and the crimped multicomponent filaments claimed herein.

PIKE et al. teaches that crimped splittable conjugate fibers are highly useful for producing lofty nonwoven fabrics since the fine fibers split from the conjugate fibers and the crimps increase the bulk or loft of the fabric. This type of fabric exhibits desirable strength properties of a fabric containing highly oriented fibers. (Col. 5, lines 29-39). On Figure 1, the reference shows a side-by-side conjugate fiber configuration.

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to provide the insulation of TILTON with splittable and/or crimpable fibers with the motivation of increasing the bulk or loft of the fabric. (As stated above).

### ***Double Patenting***

10. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground



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provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

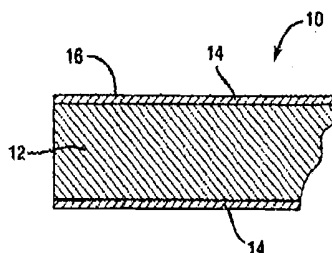
Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

11. Claim 36 is provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of copending Application No.

10/212,410 in view of TILTON (US 2004/0023586 A1) and TILTON (US 2004/0002274 A1).

Claim 1 of the copending application provides the structure of the presently claimed additional layer of claim 36 of the present invention. However, the copending application is silent to the use of such layer in a laminate as claimed herein. The '586 reference provides an acoustical insulation laminate that comprises the first and second layers claimed herein and teaches the use of an additional layer. However, it fails to teach the use of the additional high-density layer on the side of the second layer. The '274 reference provides such structure in which the high-density layers form the facing layers of the insulation laminate. (Refer to Fig. 1 below)

FIG. 1



It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the acoustical insulation material of the copending application

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and use it as a facing layer with the motivation of producing a laminate that has an enhanced aesthetic appearance as disclosed by TILTON '274 [0002].

This is a provisional obviousness-type double patenting rejection.

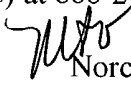
12. Claims 1, 2, 32-34 and 36 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 5, 9 and 13 of copending Application No. 10/160,776. Although the conflicting claims are not identical, they are not patentably distinct from each other because the insulator of the copending application comprises all the limitations of the present invention.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Norca L. Torres-Velazquez whose telephone number is 571-272-1484. The examiner can normally be reached on Monday-Thursday 8:00-4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Norca L. Torres-Velazquez  
Examiner  
Art Unit 1771

December 3, 2004